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Robert Bernstein, M.D., F.A.C.P.
Commissioner

MAR 8 1988

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Mr. Kevin A. Fleming
Construction Manager
Lincoln Property Company
100 Congress Ave, Suite 1700
Austin, Texas 78701

To JF
File TX098155971

Subject: Solid Waste - Travis County
Lincoln Property Company - 100 Congress Ave, Austin, Texas
Classification of Spent Activated Carbon Unit from Phase I
Water Treatment System

SUPERFUND
FILE

Dear Mr. Fleming:

This letter is in response to your request for clarification of the Texas Department of Health's (TDH) position concerning the activated carbon filtration units used in the ground water collection and treatment system for the Phase I part of your project. Your project is located in a block of property in Austin, Texas, bounded on the east by Congress Avenue, on the west by Colorado Street, on the south by West 1st Street, and on the north by West 2nd Street. Phase I will refer to the eastern half of the block where an office building and subsurface parking structure now exist. Phase II of the project will refer to activities encompassing the western half of the property.

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Historically, the Phase II part of this project was the location for a facility which produced illuminating gas for coal for the City of Austin in the early part of the 1900's. Residual coal tar from the process was deposited on site during that facility's operation. The coal tar residue remained undisturbed until the excavation for the Phase I project encountered contaminated ground water which then lead to an investigation which discovered the coal tar residue on the Phase II part of the site. The residual coal tar mass was excavated and disposed of in accordance with a plan approved by the TDH. The completed Phase I subsurface structure serves as a sump whereby ground water in the area drains into a collection system. The collected ground water, contaminated with trace amounts coal tar constituents, is treated, monitored, and discharged under a permit (discharge permit #12169) issued by the City of Austin with the knowledge of the Texas Water Commission (TWC).

The treatment system involves the use of activated carbon units to remove the trace coal tar contaminants from the ground water. The questions posed to TDH are (1) is this system and its solid waste municipal or industrial, (2) are the constituents in the ground water considered to be a solid waste, (3) is the filtration/treatment unit considered to be a waste collection/storage facility, and (4) how are the spent activated carbon adsorption units classified.

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First, any solid waste associated with either Phase I or Phase II of this project is a municipal solid waste. Although the production of illumination gas from coal would probably be considered an industrial process if in operation today, that operation ceased activity approximately 50 years ago and all subsequent activities at this location were and are municipal in nature. The operators/owners of the coal gasification project, if identifiable, are no longer involved at the location or in the activities associated with the location. The ground water was contaminated through contact with the residual coal tar left on site. The process of contamination has occurred over the past 50 years. When discovered, the current property owner—Lincoln Property Company—removed the residual coal tar mass along with some soil contaminated with coal tar constituents. A final revised closure plan for Phase II has been approved by TDH and should be completed within 20 months. The ground water which drains into the Phase I sump collection system is probably migrating to the Phase I project from other properties as well as from Phase II.

Second, the Phase I subsurface parking structure is an artificial sump for the ground water in the area. In order to discharge the collected ground water, the water must be treated in order to comply with discharge permit conditions. The collection and treatment system is considered by TDH to be water collection and treatment system and not a solid waste collection and storage system. Any discharge of treated water is subject to discharge requirements under the Texas Water Code or the federal "National Pollutant Discharge Elimination System" (NPDES) Permit regardless of whether the discharge is municipal or industrial. In Texas the NPDES Permits are under the jurisdiction of TWC. Any solid waste generated by the treatment system would be considered municipal solid waste.

Third, the carbon adsorption units used in the treatment system are intended to be returned to the supplier for reactivation. The units do not consist of materials which have been identified as a hazardous waste by the United States Environmental Protection Agency (EPA) in 40 CFR 261. To be a solid waste, a material must have met its original purpose and be intended to be discarded. Since the units are intended to be recycled, TDH would not consider the units to have met their intended purpose until they are discarded. Depending upon how the units are reactivated, the supplier may or may not have a solid waste and that waste would be subject to the rules applicable to the supplier.

Fourth, TDH does not use the industrial waste classification system developed by TWC. Some items are identified as a "Special Waste". The coal tar residual material removed from the Phase II was treated as a "Special Waste". TDH would not consider the spent activated carbon unit to be a "Special Waste".

If you have any questions concerning this letter or if we may be of any assistance to you regarding solid waste management, you may contact L. E. Mohrmann, Ph.D., C.P.C., here in Austin at telephone number (512) 458-7271 or you may prefer to contact Mr. Oran S. Buckner, P.E.,

Mr. Kevin A. Fleming
Lincoln Property Company
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Regional Director of Environmental and Consumer Health Protection at
P.O. Box 190, Temple, Texas 76501; telephone number (817) 778-6744.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rocky Stevens", with a large, stylized flourish at the end.

Rocky Stevens, P.E., Chief
Surveillance and Enforcement Branch

LEM:gsr

cc: TDH, PHR 1, Temple
Mr. Stephen O. Drenner, Jenkins & Gilchrist
Mr. John Elliott, Jenkins & Gilchrist
Mr. Philip Winsborough, Texas Water Commission
Austin-Travis County Health Department
Department of Environmental Protection, City of Austin
Ms Martha McKee, EPA IV, (TXD 981155971)
Radian Corporation